JUDGMENT NO 135 YEAR 2024

[omitted]

THE CONSTITUTIONAL COURT

[omitted]

gives the following

JUDGMENT

in proceedings concerning the constitutionality of Article 580 of the Criminal Code, as amended by Constitutional Court Judgment No 242 of 25 September 2019, initiated by the Judge for Preliminary Investigations of the Ordinary Court of Florence (*Giudice per le indagini preliminari del Tribunale ordinario di Firenze*), in criminal proceedings against M.C., C.L. and F.M., with referral order of 17 January 2024, registered as No 32 in the 2024 Register of Referral Orders and published in *Official Journal of the Italian Republic* No 11, first special series 2024.

Having regard to the entry of appearance filed by M.C., C.L. and F.M., as well as to the interventions filed by L.S. and M.O. and by the President of the Council of Ministers;

after hearing Judge Rapporteurs Franco Modugno and Francesco Viganò at the public hearing of 19 June 2024;

after hearing Counsel Benedetta Maria Cosetta Liberali, Filomena Gallo, Maria Elisa D'Amico and Francesco Di Paola for M.C., C.L., F.M., L.S. and M.O., Counsel Angioletto Calandrini for L.S. and M.O. and State Counsels Gianna Maria De Socio and Ruggero Di Martino for the President of the Council of Ministers;

after deliberation in chambers on 1 July 2024.

The facts of the case

1.– By referral order of 17 January 2024, registered as No 32 in the 2024 Register of Referral Orders, the Judge for Preliminary Investigations of the Ordinary Court of Florence raised, with reference to Articles 2, 3, 13, 32 and 117 of the Constitution, the latter in connection with Articles 8 and 14 of the European Convention on Human Rights (ECHR), questions as to the constitutionality of Article 580 of the Criminal Code, "as amended by Judgment No 242/2019" of this Court, insofar as it provides that anyone who facilitates another person's suicide will not be criminally liable on condition that the aid is given to a person being "kept alive by life-sustaining treatment".

1.1.– The referring court is called upon to decide, at the outcome of the hearing in chambers set in accordance with Article 409 of the Code of Criminal Procedure, on the application to discontinue the case submitted by the Public Prosecutor's Office at the Court of Florence in the criminal proceedings in which M.C., C.L. and F.M. are being investigated for the crime under Article 580 of the Criminal Code, "for having organised a trip to and then materially accompanied [M.S.] to the Swiss clinic where, [on 8 December 2022], he died following an assisted suicide procedure".

The referring court states that, on the basis of the undisputed findings of the preliminary investigation conducted in the wake of a report filed by the suspects themselves, in 2017 M.S. had been diagnosed with multiple sclerosis, a disease of the central nervous system that causes a progressive disability of the patient. After the onset of the first mild symptoms, the clinical picture had remained stationary for a few

years until, towards the end of 2021, there had been a significant and rapid deterioration in the patient's living conditions. At first, M.S. had experienced difficulty walking, then he needed a wheelchair, and by April 2022 he was permanently unable to move from his bed, with almost complete immobilisation of his upper limbs too except for a residual ability to use his right arm.

According to the father's statement, in 2021 M.S. had started to develop an intention to end his life, for reasons related to the disease from which he suffered. Through research carried out independently on the internet, he had learnt of the existence of associations offering support to patients interested in availing themselves of an assisted suicide procedure abroad, and in this way he had come into contact with the suspect M.C.

In 2022, coinciding with the serious deterioration of his health, M.S.'s intention had turned into a firm resolve. He therefore contacted a Swiss organisation through C., who acted as the legal representative of the support association that he had founded. That organisation also bore some of the costs of the procedure, including the expense of transporting the ill person to Switzerland by hiring a van.

M.S. reached Switzerland on 6 December 2022 on board the vehicle, driven in turn by the suspects C.L. and F.M. The referring court also states that on the following day at the Dignitas facility "interviews and visits with various doctors took place in order to verify the fulfilment of the conditions required to avail of the procedure in terms compatible with Swiss law". M.S. had also had the opportunity to talk to his family members who had come there, resisting their attempts to dissuade him from his intention to commit suicide.

The procedure concluded on 8 December 2022: in the presence of his father, his sister and the two suspects, M.S. definitively confirmed his will and, using the arm he could still control, took a lethal drug orally, dying after a few minutes.

1.2.– The referring court considers that the prosecution's application to dismiss the case cannot be granted at this stage.

1.2.1.– In the referring court's opinion, the suspects' conduct undoubtedly falls within the scope of Article 580 of the Criminal Code, and in particular the criminal offence of *assisting* suicide. The referring court is of the view that that is the only charge that could be brought under the provision in question since there are no elements that would allow charges to be brought against the suspects for the separate case of *inciting* suicide, be it in terms of contributing to establishing the individual's resolve – done by M.S. independently – or strengthening it. In fact, C. had initially confined himself to providing information in an "advisory" capacity, pointing out viable solutions, and had made his contacts with Switzerland available only when M.S.'s intention had already been fully formed. The referring court maintains that the same can be said for the other two suspects, who had intervened only when the ill person's resolve was already firm.

The referring court maintains that the criminal implications of the suspects' conduct stem solely from their material cooperation in the carrying out of the suicide. In that regard it rejects the prosecution's stance, aimed at ruling out that the conduct in question falls within the scope of the criminal provision on the basis of a restrictive

interpretation of both the concept of facilitating the suicide of others and the criterion of the causal impact of such conduct with respect to the event.

According to the referring court, the wording of Article 580 of the Criminal Code, in the part in which it punishes anyone who "facilitates in any way the commission" of another person's suicide, requires one to consider any conduct of a third party which, in accordance with the usual criteria for establishing causality, is a necessary antecedent to the suicide's death. The verb "to facilitate", which is less stringent than "to cause", far from warranting restrictive interpretations, would actually lend itself to classifying as a criminal offence even mere facilitation, which does not constitute a *condicio sine qua non* of the event. While the expression "in any way" undeniably reveals a legislative intent to give the provision the broadest scope.

Nor, according to the referring court, could an argument to the contrary be drawn from the circumstance that Article 580 of the Criminal Code links facilitation not to suicide but to its "commission". This is explained by the fact that the criminal offence presupposes that the harmful event entails an action by the victim, who retains their "dominion" over it. It follows that the conduct must have an immediate causal connection not with death itself but with the commission of the suicide, which remains the prerogative of the individual taking their own life.

The referring court further states that, contrary to the prosecution's argument, one cannot rule out that the facts fall within the scope of the provision by relying either on the distance in time between the third party's conduct and the suicide or on the "fungibility" of the conduct itself. According to the but-for test, a counterfactual judgment on causation relates to the actual event that occurred: therefore, in the present case, the conduct of all three suspects was the necessary causal antecedent of M.S.'s suicide, since in its absence M.S.'s death would not have occurred "then and there".

1.2.2.– In the referring court's opinion, the suspects' conduct would not even fall within the scope of the exception introduced into Article 580 of the Criminal Code by this Court's Judgment No 242/2019. Indeed, one of the requirements is missing: namely, that of the dependence on "life-sustaining treatment".

1.2.2.1.– In the light of the evidence on the record, the referring court acknowledges that the other substantive conditions required by the aforementioned ruling for the exclusion of criminal liability are met.

M.S. was suffering from an incurable disease (multiple sclerosis), which cannot be cured under the present state of medical and scientific knowledge. He also endured, as a consequence of it, psychological suffering that he himself considered unbearable: he could no longer stand being "imprisoned with a healthy mind in a body that does not work" and leading therefore to what, in his view, "was no longer a dignified life".

In this regard, the referring court emphasises how the disjunctive "or" used in Judgment No 242/2019 requires that importance be attached to both physical and purely *psychological* suffering. The assessment of the intolerability of the suffering, on the other hand, is a matter for the ill person alone, without their judgment being substituted by that of third parties (be they doctors, judges or family members), who are called upon, at most, to verify the patient's mental capacity and the seriousness of their intent.

The decision to end his own life was, moreover, consciously conceived and maintained by M.S., who was free from any form of undue pressure by third parties.

1.2.2.2.– As regards the procedural conditions laid down in the aforementioned judgment, the referring court submits that the procedures set out in Articles 1 and 2 of Law No 219 of 22 December 2017 (Provisions on informed consent and advance medical directives) have been complied with and that the implementing procedures and substantive conditions "have been verified by a public national health service facility […] after consulting the territorially competent ethics committee".

According to the referring court, these conditions could be considered to be substantially fulfilled or, in any case, "non-compliance therewith on a formal level" would not be an obstacle to the suspects escaping criminal liability.

With regard to the procedure set out in Articles 1 and 2 of Law No 219/2017, which is tailored to instances of refusal of life-saving medical treatment, the referring court recalls that the procedure requires that the patient be duly informed about their health condition, prognosis and viable alternatives (Article 1(3)); it also requires that, in the event of their refusal to undergo medical treatment, a second discussion with health care professionals take place (Article 1(5)). These are required to explain to the patient the consequences of their decision and the existing alternative options, while ensuring a psychological support service and access to palliative care.

In the referring court's view, the procedure was respected at the Swiss facility where M.S. died, which appears to have followed an "even more detailed and protective" protocol than that which should be followed under Italian law. The procedure consisted in "the submission by the applicant of appropriate documentation outlining his clinical condition and personal history; a preliminary assessment by the facility on the basis of the material acquired; an assessment, including a psychological one, in the presence of the applicant, consisting of two interviews with the doctors, one on the day of his arrival and one on the following day; the presence of witnesses (in this case, among others, his family members) at the time of the self-administration of the lethal drug, immediately preceded by a final warning about the possibility of stopping the procedure".

The referring court states that similar procedures have already been assessed as "substantially equivalent" to that envisaged under Italian law by some court decisions, which are now final. It is true that in such cases the courts have been able to avail themselves of the "equivalence clause" provided for in Judgment No 242/2019 for acts committed before Article 580 of the Criminal Code was declared unconstitutional, in respect of which it would have been impossible to comply with a procedure introduced *ex post*. Nonetheless, the same assessment could also be made in relation to the present case, the events of which took place entirely under the new rules, since the need for a particular procedure to be observed would not exclude the possibility that some individual steps of that procedure could be ascertained applying a substantive test.

As regards the other procedural requirements (verification by a public national health service facility and an independent opinion by an ethics committee), the referring court states that the fact that in the present case the event occurred in a foreign facility means that those requirements could not be possibly met.

In any event, according to the referring court, although an ad hoc procedure already existed at the time in Italy, it would have been inaccessible to M.S., whose application would have been rejected on the ground that it did not meet the substantive condition of dependence on life-sustaining treatment.

The referring court adds, in this regard, that should the Constitutional Court consider the questions to be well founded, it may well specify – as it did in Judgment No 242/2019 – that the exclusion from criminal liability, in its widest extension, must also operate with regard to facts predating the declaration of unconstitutionality if the suicide was facilitated in a manner capable of affording substantial safeguards to the patient.

1.2.2.3.– However, the referring court maintains that the further requirement of the patient's dependence on life-sustaining treatment is not fulfilled here.

In this regard, the referring court notes that this Court did not provide, either in Order No 207/2018 or in Judgment No 242/2019, for a definition of "life-sustaining treatment". There is only, in the Order, a reference – with obvious illustrative value – to treatments "like artificial ventilation, hydration or nutrition".

In relation to other cases of patients who had obtained assistance abroad to end their lives, the case law of trial and appeal courts has held that the concept in question cannot be limited only to "dependence on a machine" but also includes cases in which life support is provided "with pharmacological therapies or with the assistance of medical or paramedical personnel", as long as " interrupting such treatments would result in the death of the patient, even if not immediately" (Assize Court of Massa, judgment of 27 July 2020).

Even employing such a broad interpretation, the referring court is of the view that the requirement of dependence on life-sustaining treatment could not be held to be fulfilled in the present case. According to the findings of the investigation, not only did M.S. not make use of any mechanical support (ventilation, nutrition, artificial hydration, etc.), but he was not undergoing life-saving pharmacological therapies. Nor did he require any assistance such as manual evacuation manoeuvres or the like.

The referring court goes on to state that it would not be possible to adopt the even more extensive interpretation espoused by some trial and appeal courts aimed at excluding criminal liability also in cases where the patient needs the help of other persons to satisfy their basic vital needs: a situation that can be seen in the case at issue in the main proceedings, given that M.S., while preserving all his other bodily functions intact, increasingly needed the support of third parties for daily physiological activities due to the progressive immobilisation of his limbs.

In light of the very origin of the requirement of dependence on life-sustaining treatment at issue, the referring court argues that the expression "treatment" should be considered to refer only to medical treatment. It maintains that the declaration of unconstitutionality in Judgment No 242/2019 is essentially based on the finding that the absolute criminal ban on assisted suicide is contrary to the canon of reasonableness, to the right of self-determination of the person and to the principle of human dignity in situations in which the legal system already recognises effective protection for the decision of a patient to end their life through the interruption of medical treatment. In this regard, it is argued that the said judgment makes explicit reference to situations

falling within the scope of Law No 219/2017, which relates, precisely, only to medical treatment.

The referring court adds that the general assistance provided by third parties – for example, helping the patient eat or accompanying them to the bathroom – would not even fall within the set of meanings embodied in the word "treatment", which implies not just any external intervention but "a more meaningful and qualified interference with the patient's body and health".

The referring court is of the view that the extension of the exclusion of criminal liability to the situation at hand could not even be based on recourse to analogy, the latter being in any case precluded by the exceptional nature of the criminal provision under consideration. Even if an extension *in bonam partem* were envisioned, it would be necessary to consider that the matter presupposes a delicate balancing of interests (such as the right to self-determination and the right to life) that, as a result of even slight shifts in the threshold of what conduct is deemed to be criminal, could be irreversibly harmed, in a manner incompatible with the positive obligations arising from the Constitution and international sources (including, in particular, the ECHR). It would therefore be "best that such balances should not only be the result of adequate consideration in the appropriate fora in accordance with the rules of constitutional democracy, but that, once struck, they should not be arbitrarily called into question through forced interpretations by the individual interpreter, with uneven and unpredictable applicative effects".

1.3.– The referring court considers, however, that the requirement that the person be "kept alive by life-sustaining treatment" is incompatible with several Constitutional provisions.

1.3.1.– First of all, it is argued that the requirement is contrary to Article 3 of the Constitution, inasmuch as it would lead to unreasonable unequal treatment of situations that are substantially identical.

All other conditions being equal (incurability of the illness, intolerability of the resulting suffering and capacity for self-determination on the part of the person concerned), fulfilment of the requirement of dependence on life-sustaining treatment would be the result of entirely fortuitous circumstances, linked to the general condition of the patient, the specific type of disease (how advanced it is or how rapidly it is progressing), the nature of the therapies available in a given place and at a given time, and the patient's own choices (who may have refused any treatment from the outset). According to the referring court, the requirement in question discriminates between patients kept alive by life-sustaining treatment and patients – such as, for example, cancer patients or patients suffering from neurodegenerative diseases, as in the present case – who are not dependent on such treatment because of the characteristics of their incurable diseases but are also subjected to intolerable suffering.

The referring court maintains that any differentiation between those situations is unreasonable, since the disputed requirement of dependence on life-sustaining treatment is irrelevant, both as regards the existence and ascertainment of the other conditions that must be met and the protection of the rights and values which this Court took into consideration in striking a balance between the interests underlying assisted suicide.

The referring court points out that in Order No 207/2018 and Judgment No 242/2019 this Court emphasised the necessity to reconcile the need for self-determination and the protection of dignity with the need to protect human life, especially that of the most vulnerable persons, which is safeguarded by the prohibition in Article 580 of the Criminal Code. Conversely, in its subsequent Judgment No 50/2022, which declared the inadmissibility of an application for a referendum to repeal the related offence of consensual homicide under Article 579 of the Criminal Code, this Court emphasised the need to protect not only vulnerable patients, but more in general any individual from self-destructive conduct that may be insufficiently thought through or result from a decision taken in a state of vulnerability.

In the light of those statements, the referring court claims that dependence on life-sustaining treatment could not constitute a regulatory criterion suitable for and proportionate to the objective of protecting human life. The fact of not being dependent on such treatment, in particular, does not tell anything about the mental capacity of the patient and the firmness of their intention to die, nor does it indicate, as such, a state of a special "vulnerability" of the patient.

In the referring court's view, the opposite is true since the risk is higher that a person dependent on life-sustaining treatment may take extreme decisions. But this objection was rejected by Order No 207/2018, noting that Law No 219/2017 had already envisaged the possibility of considering as validly expressed the will to die expressed by persons kept alive by life-sustaining treatment, who, if capable of self-determination, have the right to obtain the interruption of treatment.

In conclusion, according to the referring court, the same situation already stigmatised by this Court in relation to the original absolute ban on assisted suicide arises again: the criminal provision discriminates against the different categories of patients in an unreasonable and disproportionate manner (Order No 207/2018).

1.3.2.– The referring court states that the same considerations also lead to the conclusion that the challenged requirement of dependence on life-sustaining treatment entails an unwarranted violation of the "freedom of self-determination of the patient in the choice of therapies, including those aimed at freeing them from suffering, deriving from Articles 2, 13 and 32(2) of the Constitution".

It is claimed that the requirement of dependence on life-sustaining treatment would certainly not constitute a condition for the existence of that right (linked, according to this Court's indications, only to illness and suffering), but would rather represent a limitation thereof, as such lawful only if warranted by competing interests of similar importance, which, as aforesaid, do not exist.

Indeed, it is argued that the requirement ends up "perversely" conditioning the exercise of the patient's freedom, inducing them to consent to life-sustaining treatment for the sole purpose of fulfilling the condition laid down by this Court only to then immediately afterwards request access to an assisted suicide procedure. And this even when the person would have stopped the treatment much earlier or would have refused it from the outset. This scenario is said to be in clear conflict with the legal framework, now crystallised by Article 1(5) of Law No 219/2017, which leaves it solely to the person's free choice as to whether and how to receive treatment.

1.3.3.– The referring court further argues that the "principle of human dignity" is infringed.

This principle was cited by this Court in Order No 207/2018, for the purpose of establishing the unconstitutionality of Article 580 of the Criminal Code in the version in force at the time. The violation of the principle was held to be inherent in the fact that the absolute ban on assisted suicide – i.e. conduct that would accelerate the time of death compared to the natural course of events – would have imposed on the patient "one single way to take their leave of life" (the interruption of life-sustaining treatment), forcing them "to undergo a slower process" and in a scenario that does not correspond to "the patient's vision of a dignified death", also in view of the suffering for "the people close to the patient".

The referring court states that it is common sense that prolonged waiting for death may entail a greater burden of suffering and prejudice for the person's values, linked not only to the pain arising from the disease but also to the now desperate contemplation of one's own agony as well as to the fact that loved ones may be forced to witness this decline: an aspect in relation to which the patient's interest in leaving a certain image of themselves, consistent with the idea that they have of their own person, is relevant as a form of expression of personality.

It is claimed that the same arguments could, moreover, be expounded in relation to the present legal situation, which ends up forcing the incurable and intolerably suffering patient to wait, possibly for a long time, for the disease to worsen to the stage that makes it necessary to commence life-sustaining treatment (a stage from which a further period of time for the procedure leading to assisted death must be counted).

The referring court maintains that this not only frustrates the rationale of this Court's previous decision, but may even imperil life and respect for the dignity of the person. The fact that only patients in terminal conditions are allowed assisted suicide may encourage individuals who do not wish to wait for that moment to commit suicide at an earlier stage of their illness, when they can still perform the act without other people's help, but outside the controls and guarantees afforded by law and in ways that are often gruesome and not dignified.

1.3.4.– Lastly, the referring court is of the view that the challenged provision is inconsistent with Articles 8 and 14 ECHR and, thereby, with Article 117 of the Constitution.

According to the case law of the European Court of Human Rights (ECtHR), starting with the judgment of 29 April 2002, *Pretty v. United Kingdom*, provisions restricting the lawfulness of assisted suicide constitute an interference with a person's freedom of self-determination, which is part of the right to respect for private and family life. Such interference may be regarded as lawful, within the meaning of Article 8(2) ECHR, only insofar as it serves a legitimate aim and is necessary, among other things, "for the protection of the rights of others", which undoubtedly include the right to life, enshrined in Article 2 ECHR.

However, according to the referring court, allowing a person to assist another person's suicide only when the latter is dependent on life-sustaining treatment constitutes a limitation of the right in question that is neither instrumental nor

necessary for the protection of the right to life or, in any event, not proportionate to the objective.

It is not a valid objection, according to the referring court, to point out that the State retains a margin of appreciation as to the balance to be struck between the need to protect the right to life of vulnerable persons and the patient's freedom of self-determination in end-of-life decisions, and consequently to maintain that the Italian legal system has availed itself of this margin of appreciation by providing for the challenged requirement. The objection cannot stand against the principle of non-discrimination under Article 14 of the ECHR: once national legislation recognises the freedom to be assisted in dying for the incurably ill and suffering, the enjoyment of that freedom should be ensured without any discrimination linked to the individual's personal conditions, including whether their life is dependent on life-sustaining treatment.

1.4.– In the light of those considerations, the referring court requests that this Court declare Article 580 of the Criminal Code, "as amended by [...] Judgment [No] 242/2019", to be unconstitutional insofar as it makes the exclusion of criminal liability of an individual who facilitates the suicide of another person conditional on the circumstance that the aid be provided to a person "kept alive by life-sustaining treatment".

The referring court points out that this does not mean that it is asking for a reversal of the principles set out in the previous judgment, which would be precluded by Article 137(3) of the Constitution. It is argued that in Judgment No 242/2019 this Court identified a minimum threshold of protection to be afforded to the fundamental rights of the patient, taking into account, as one can read in the decision, in particular "situations such as the one at issue in the main proceedings". This does not exclude the possibility that the opportunity afforded by the present case might lead this Court to revisit the matter again, not unlike what has happened in relation to other legislative provisions that have been declared, on subsequent occasions, partially unconstitutional. The ban on assisted suicide under the Criminal Code, whose original scope has already been restricted by the previous judgment, is still overbroad and requires further limitation in order to be in line with constitutional principles.

2.– The President of the Council of Ministers, represented and defended by State Counsel, intervened in the proceedings, requesting that the questions be declared inadmissible or unfounded.

[...]

2.2.– State Counsel submits that the questions are unfounded on the merits.

2.2.1.– As to the question raised with reference to Article 3 of the Constitution, State Counsel recalls that in Judgment No 242/2019 this Court stated that "Article 2 of the Constitution – like Article 2 ECHR – imposes a duty upon the State to protect the life of every individual, not the right to ensure that each individual may obtain assistance to die, from the State or third parties". Article 580 of the Criminal Code maintains the rationale of protecting "the right to life, particularly that of the weakest and most vulnerable members of society" to prevent the danger that "people deciding to carry out the extreme and irreversible act of suicide would face pressure of any kind' (Order No 2017/2018)".

State Counsel adds that similar points were made in Judgment No 50/2022, where it was reiterated that the right to life, implicitly enshrined in Article 2 of the Constitution, should be included "among inviolable rights, i.e. among those rights that hold a privileged position in the legal system, so to speak, because they belong – to use the expression of Judgment No 1146/1988 – 'to the essence of the supreme values on which the Italian Constitution is based' (Judgment No 35/1997)".

Therefore, it is argued that the paramount principle is still protection of life, to which the "limited area" of unconstitutionality identified by Order No 207/2018 and Judgment No 242/2019 is an exception.

State Counsel claims that the principle of non-discrimination cited by the referring court cannot operate in such a context because the absence of one of the requirements delimiting the exception (namely, the patient being "kept alive by life-sustaining treatment") would entail the re-expansion of the general rule mandating punishment of those who facilitate the commission of another person's suicide.

State Counsel asserts that, by contrast, limiting the ground of exclusion of criminal liability to persons dependent on life-sustaining treatment is not unreasonable but fits naturally into the existing legal framework. Indeed, it is said that that point was made in Order No 207/2018 and Judgment No 242/2019, with the observation that the persons in question were already entitled, under Article 1(5) and (6) of Law No 219/2017, to refuse or to interrupt the medical treatment necessary for their survival and, under Article 2 of the same law, to have access to continuous deep sedation in association with pain therapy, to cope with suffering refractory to medical treatment.

State Counsel alleges that the situation of a person suffering from a disease requiring life-sustaining treatment cannot, on the other hand, be equated with that of a person suffering from a disease that, although incurable and a harbinger of serious suffering, does not require such treatment.

State Counsel further argues that the question regarding the alleged unconstitutionality at issue is also inadmissible in light of the well-established case law of this Court under which an exception to a rule is incapable of constituting a *tertium comparationis* since it is not possible to extend a provision derogating from the general rule to other situations, except in the case – inconceivable here – in which the *eadem ratio derogandi* exists.

2.2.2.– As regards the alleged violation of the patient's right to self-determination, State Counsel submits that that right cannot override the protection of life, which in the hierarchy of values protected by the constitutional and supranational order occupies a superior position.

In this respect, State Counsel recalls that this Court, in Judgment No 50/2022, reaffirmed the "key importance of the value of life". While respect for this value does not lead to the recognition of a duty to live at all costs, neither does it allow for regulation of end-of-life decisions that, "in the name of an abstract conception of individual autonomy", ignore the situations of distress or solitude in which, often, such decisions are conceived. […]

In the light of the above statements, State Counsel claims that the referring court has clearly made an error by maintaining that the only two elements for excluding

criminal liability for assisted suicide were "illness and suffering", and not the treatment they receive. In this way, the referring court has overlooked the essential need to ensure safeguards against the danger of abuse to the detriment of the lives of persons in vulnerable situations.

2.2.3.– As for the alleged violation of the "principle of human dignity", based on the assumption that the arguments expounded in this regard in Order No 207/2018 also apply to the current legal framework, State Counsel points out that there is a significant difference between the case examined in the precedent and the one at issue here and that, in any event, the lack of precision of the concept of human dignity would prevent it from being a distinguishing factor between cases in which it is lawful to protect life and those in which it is lawful to suppress it.

2.2.4.– Lastly, as regards the alleged violation of international law governing the protection of the fundamental rights of the individual, State Counsel argues that there is no such infringement.

State Counsel stresses that – as Judgment No 242/2019 has already recalled – the ECtHR has long ruled out, in *Pretty v. United Kingdom*, that a right to die can be inferred from the right to life enshrined in Article 2 ECHR.

State Counsel also argues that the points made above in relation to the alleged violation of Article 3 of the Constitution make it clear that there is no infringement of the prohibition on discrimination laid down in Article 14 ECHR.

3.– M.C., C.L. and F.M., suspects in the main proceedings, filed a brief in support of the claims made by the referring court.

[...]

3.2.– The intervenors argue that the questions are well founded on the merits in the light of all the constitutional provisions referred to.

3.2.1.– In line with the argument of the referring court, the intervenors claim that the infringement of Article 3 of the Constitution stems from the fact that a person afflicted by an incurable illness that is a source of intolerable suffering and has freely decided to take their leave of this life but is *not* kept alive by life-sustaining treatment, may find themselves in a situation just as painful as that of another ill person who is undergoing such treatment.

It is argued that the requirement of dependence on life-sustaining treatment does not in any way contribute to measuring the patient's capacity to make decisions, their freedom or autonomy of choice or the intensity of the suffering endured. The requirement is entirely indifferent to the need to protect the patient from possible abuses. Neither does it serve to protect psychiatric patients or those who have determined to end their life on account of a merely transient medical condition. The requirement is, therefore, inconsistent with the rationale of the exception from criminal liability carved by Judgment No 242/2019.

3.2.2.– The intervenors claim that the requirement in question also conflicts with the "personalist principle" under Article 2 of the Constitution, with the inviolability of personal freedom enshrined in Article 13 of the Constitution and with the freedom of self-determination with regard to medical treatment arising from the combined provisions of Articles 2, 3, 13 and 32(2) of the Constitution.

The requirement forces people – like M.S. – whose body "is transformed by the disease, in a painful process that therapies are unable to counteract or mitigate", to continue in the ordeal of their suffering, without the possibility of choosing a dignified death. This to the point that patients must hope for a worsening of their disease in order to become eligible for assisted suicide once their life has become dependent on life-sustaining treatment. According to the intervenors, this situation amounts to a kind of compulsory medical treatment.

The restriction of the patient's freedom is not justified by the need to protect other constitutional rights. In fact – as the Supreme Court of Canada pointed out in *Carter v. Canada*, cited in Order No 207/2018 – the patient's awareness of the absence of alternatives to an approaching "endless night" could even accelerate their decision to take their own life, at an early stage of their illness, when they are still capable of doing so autonomously.

3.2.3.– The intervenors note, on the other hand, that the Italian legal system lacks a normative or medical definition of the notion of "life-sustaining treatment". The only normative reference is in Law No 219/2017, which includes – with a clearly non-exhaustive indication – artificial nutrition and hydration among the treatments that a patient has the right to refuse.

As a result, according to the intervenors, the interpretation of what constitutes life-sustaining treatment has been, and still remains, entrusted to the mere discretion of the multidisciplinary medical commissions appointed by the health authorities involved in requests for assisted suicide. This leads not only to an unacceptable legal uncertainty in such a delicate matter but also to serious disparities in treatment, to the detriment of particularly vulnerable individuals.

The intervenors state that an examination of cases reveals that medical commissions have considered the requirement of life-sustaining treatment to be fulfilled with respect of patients carrying a pacemaker and a permanent bladder catheter or treated with anti-cancer drugs. Contradictorily, assisted suicide was denied in the case of a cancer patient dependent on oxygen therapy and undergoing heavy pain-relieving treatment, the discontinuation of which would have caused their death.

Three applications for assisted suicide by persons suffering, like M.S., from multiple sclerosis had contrasting outcomes. In one case, it was held that the need for third-party assistance to carry out all vital functions, the use of a lung ventilator at night and daily evacuation enemas should be considered life-sustaining treatment. In the other two cases, the requirement in question was held not to be satisfied even though the patients in question were unable to carry out any activity independently and were therefore entirely dependent on third parties.

In the intervenors' view, only if the questions as to constitutionality raised in the present case were to be held to be well founded could this unacceptable discrimination be overcome.

3.2.4.– The intervenors further claim that the narrowness of the scope of application of the exclusion from criminal liability introduced by Judgment No 242/2019 also conflicts with the right to respect for private and family life, enshrined in Article 8 ECHR, and consequently violates Article 117(1) of the Constitution.

It is argued that ever since the leading case of *Pretty v. United Kingdom* the ECtHR has recognised that the individual's right to decide at what point and by what means to end their life is one of the aspects protected by Article 8 ECHR. The principle was reaffirmed by subsequent case law, up to the recent judgment of 4 October 2022 in *Mortier v. Belgium*. According to the intervenors, this implies that the State may interfere with individual end-of-life decisions only in compliance with the standards codified in Article 8(2) ECHR: a ban on assisted suicide backed up by criminal sanctions could therefore be envisioned to protect life, but only if in accordance with the principle of legality, if it pursues a legitimate aim and if necessary in a democratic society, in observance of the criterion of proportionality between the means employed and the aim pursued. In the present case, on the contrary, the criminal law provision results in an unnecessary and disproportionate interference in the private life of the patients because of the irrelevance of that requirement for the purposes of protecting them from possible abuse.

4.– L.S. and M.O. have also separately intervened *ad adiuvandum* in these present constitutional proceedings, making similar submissions.

4.1.– At the outset, the intervenors' legal counsels point out that, in accordance with this Court's well-established case law, the intervention of third parties in constitutional review proceedings is permissible only when the impact on the individual legal position of the third parties concerned does not stem – like for all the other substantive relationships governed by the challenged law – from the ruling on the constitutionality of the law itself but would be an immediate and direct consequence of the effect that the ruling would produce on the substantive relationship at issue in the main proceedings: it follows that an application for intervention cannot be based on the mere analogy of the would-be intervenor's legal position with those of the parties to the main proceedings.

In the light of those principles, it is argued that L.S. and M.O. are entitled to intervene since, on the one hand, their individual legal position is not analogous in any way to that of the suspects in the main proceedings and, on the other hand, the fate of that legal position depends directly on the outcome of these present constitutional proceedings, which is the only forum in which that position could be raised, also and above all in view of "the peculiar role of the 'time factor'".

In this regard, the intervenors' legal counsels state that L.S. and M.O. have both suffered from multiple sclerosis for more than twenty-five years. Due to the progression of the disease, they are currently suffering from very serious motor limitations which, in addition to the need for various types of aid, make them dependent, in order to carry out their vital functions, on the continuous assistance of third parties, without which they would "die from starvation, [...] with disregard for their dignity as human beings". They therefore asked their local health authority to verify fulfilment of the requirements of Judgment No 242/2019 so as to access an assisted suicide procedure. However, they received a negative response on the grounds that the requirement of dependence on life-sustaining treatment has not been satisfied. This led them to apply for access to a medically assisted suicide procedure in Switzerland.

The intervenors' legal counsels add that, according to the Court's case law on Article 24 of the Constitution, there can be no proceedings directly affecting individual legal positions without the holders of those positions having the opportunity to be parties to the proceedings. Given the state of advancement of the disease and the impossibility of adequate containment of the suffering, the intervenors do not even have time to initiate judicial proceedings whereby they could seek to have similar questions as to constitutionality raised by other ordinary courts. In light of their special condition, therefore, they should be allowed to be parties to the current proceedings.

4.2.– On the merits, the intervenors requested that the questions be held to be well founded.

5.– Ten amicus curiae briefs were received, admitted by decree of the President of the Court of 10 May 2024.

[...]

5.1.– Regarding the briefs supporting the referring court's stance, some amici curiae preliminarily note that today's constitutional review proceedings cannot be considered precluded by the fact that the questions concern a fragment of a rule inserted into Article 580 of the Criminal Code by this Court itself. Indeed, it is pointed out that there are numerous cases in which this Court has repeatedly revisited rules that had already been scrutinised (Unione camere penali italiane and La società della ragione APS).

As to the merits of the questions as to constitutionality, some amici curiae maintain that the exclusion of criminal liability for assisted suicide should be anchored solely to the incurability of the disease, the gravity of the suffering and the patient's ability to make free and informed decisions, and not to the type of medical care that the person is undergoing, lest unreasonable disparities in treatment be created. Very serious and incurable diseases in respect of which life-sustaining treatment is not usually necessary – such as oncological or neurodegenerative diseases – are no less deserving of medical aid to put an end to the suffering endured and free those affected by a condition of life that is no longer in keeping with their idea of dignity (Unione camere penali italiane, La società della ragione APS and Consulta di bioetica ONLUS).

An amicus curiae argues that making access to an assisted suicide procedure conditional on dependence on life-sustaining treatment leads to unfair results, especially with regard to patients with an unfavourable short-term prognosis. A cancer patient who has only a few months left to live and is in a state of intolerable suffering is deprived of the possibility of escaping that condition, whereas patients who would still have years of life ahead of them thanks to life-sustaining treatment could free themselves from suffering prematurely through assisted suicide (Consulta di bioetica ONLUS).

Moreover, it is argued that undergoing life-sustaining treatment is not a factor that allows patients to be discriminated against in their choice of how to take leave of this life. Indeed, Article 2(2) of Law No 219/2017 provides that patients with an unfavourable prognosis in the short term or whose death is imminent and who show suffering refractory to medical treatment may have access to continuous deep palliative sedation: such regardless of whether or not these conditions depend on the refusal of life-sustaining treatment (again Consulta di bioetica ONLUS).

Some amici curiae stress that the requirement of dependence on life-sustaining treatment hampers access to assisted suicide in the absence of any "trade off" in terms of protecting the ill person from any abuse (Associazione Luca Coscioni per la libertà di ricerca scientifica APS). […] It follows that, ultimately, the requirement would prove incapable of making the conduct of assisting suicide any more or less offensive (Consulta di bioetica ONLUS).

From another point of view, some amici curiae note that the absence of general consensus in the medical literature as to how the concept of "life-sustaining treatment" is to be construed means that the requirement lends itself to discretionary interpretations, harbingers of further discrimination between patients and among those who assist them in their suicide (Unione camere penali italiane, Associazione Luca Coscioni per la libertà di ricerca scientifica APS and Consulta di bioetica ONLUS).

Symptomatic of these critical issues, according to some amici curiae, is the fact that the requirement of dependence on life-sustaining treatment is unique and does not lend itself to comparison because none of the foreign laws regulating medically assisted suicide contemplates it (Consulta di bioetica ONLUS and Associazione Luca Coscioni per la libertà di ricerca scientifica APS).

According to one amicus curiae, the problems highlighted above could not be solved by interpretation, except by construing the notion of life-sustaining treatment so broadly as to deprive it of any distinguishing capacity, i.e. by having it encompass any type of aid or support, including a purely psychological one. Any other interpretation would, in fact, be inevitably discriminatory. This is also true for an "intermediate" interpretation that extends the meaning of the expression beyond the hypothesis of "dependence on a machine", so as to include all cases of dependence on treatment that can be classified as medical, including pharmacological. While such an interpretation would have the virtue of reducing the number of patients discriminated against, it would however underscore the unreasonableness of the results to which application of the criterion may lead, especially when it comes to differentiating patients undergoing pharmacological treatment from those who do not require medical aid in the strict sense of the word, but only material aid to carry out elementary functions like going to the bathroom or eating in order to continue living (Consulta di bioetica ONLUS).

Another amicus curiae does not rule out, conversely, the possibility that this Court might be guided in different terms from those envisaged by the referring court, through a broad construction of the requirement of dependence on life-sustaining treatment based on analogical interpretation *in bonam partem* (La società della ragione APS).

5.2.– For their part, the amici curiae opposing the referring court's claims set out several reasons why the questions are inadmissible.

[...]

On the merits, these amici curiae deny that there is any violation of Article 3 of the Constitution, pointing out that the requirement of dependence on life-sustaining treatment, far from discriminating against similar cases on the basis of a purely random datum, testifies in an objectively verifiable manner to the gravity of the patient's living conditions, the progress of the disease and the proximity of the patient to death

(Movimento per la vita italiano – Federazione dei Movimenti per la vita e dei Centri di aiuto alla vita d'Italia, Centro studi Rosario Livatino, Unione per la promozione sociale – ODV, Scienza & vita and Unione giuristi cattolici italiani).

It is argued by some amici curiae that the referring court's stance overlooks the fact that Judgment No 242/2019 identified room for an exclusion of criminal liability for assisted suicide on the basis of the provisions of Law No 219/2017, presenting assisted suicide as an alternative to the interruption – to which the patient is entitled – of the life-sustaining treatment in place with concomitant submission to continuous deep sedation: this makes the requirement in question a pivotal element (Movimento per la vita italiano – Federazione dei Movimenti per la vita e dei Centri di aiuto alla vita d'Italia, Centro studi Rosario Livatino, Unione per la promozione sociale – ODV and Osservatorio sull'attività parlamentare Vera lex?). It is argued that it would be arbitrary to extend the notion of life-sustaining treatment to include any treatment – including non-medical – that contributes in some way to prolonging an individual's life (Osservatorio sull'attività parlamentare Vera lex?).

A number of amici curiae likewise deny any infringement of the right to therapeutic self-determination. The referring court is claimed to have based its view on the premise that self-determination has no limits: a reconstruction that is stated to be inconsistent with the constitutional framework. In fact, according to the amici curiae, the indications of this Court – contained not only in its Order No 207/2018 and Judgment No 242/2019 but also in its subsequent Judgment No 50/2022 – espouse the opposite principle, namely, that in any balancing exercise between the freedom of self-determination and the need to protect human life, the former cannot as a general rule prevail over the latter (Movimento per la vita italiano – Federazione dei Movimenti per la vita e dei Centri di aiuto alla vita d'Italia, Comitato Ditelo sui tetti, Associazione family day – Difendiamo i nostri figli APS, Associazione medici cattolici italiani and Associazione Nonni 2.0).

With regard to the alleged infringement of the principle of human dignity, some amici curiae claim that the referring court has based its reasoning on a markedly subjective connotation, disregarding the fact that, when mentioned in the Constitution (Articles 3, 36 and 41), dignity is always considered from an objective perspective. It is argued that even this Court has recognised human dignity in objective terms, most recently in Judgment No 141/2019 (Movimento per la vita italiano – Federazione dei Movimenti per la vita e dei Centri di aiuto alla vita d'Italia, Comitato Ditelo sui tetti, Associazione family day – Difendiamo i nostri figli APS, Associazione medici cattolici italiani and Associazione Nonni 2.0). It is also maintained that a patient's subjective perception of dignity in dying is an important element but must yield to the primacy of the protection of the basic right to life (Osservatorio di bioetica di Siena – ETS and Esserci per essere).

Nor, finally, according to a number of amici curiae, could Article 117(1) of the Constitution be considered to be infringed. Indeed, the ECtHR has affirmed that the prohibition on assisted suicide is compatible with Article 8 ECHR, it being left to the margin of appreciation of the individual States to assess whether the possible liberalisation of assisted suicide could give rise to risks of abuse to the detriment of the most vulnerable patients (Movimento per la vita italiano – Federazione dei

Movimenti per la vita e dei Centri di aiuto alla vita d'Italia). It is argued that the reference to Article 14 ECHR appears to be irrelevant since the ECtHR has specified that a difference in treatment between individuals in similar situations is discriminatory only if it does not pursue a legitimate aim or if there is no reasonable relationship of proportionality between the means employed and the aim sought to be realised (Movimento per la vita italiano – Federazione dei Movimenti per la vita e dei Centri di aiuto alla vita d'Italia and Osservatorio sull'attività parlamentare Vera lex?).

According to the amici curiae, the protection of incurable patients should remain entrusted rather to the implementation of the right to palliative care and pain therapy envisaged by Law No 38/2010 (Movimento per la vita italiano – Federazione dei Movimenti per la vita e dei Centri di aiuto alla vita d'Italia, Scienza & vita and Unione giuristi cattolici italiani). That should give real effect to the profound significance of the State's duty to take care of the health of the individual established by Article 32 of the Constitution (Comitato Ditelo sui tetti, Associazione family day – Difendiamo i nostri figli APS, Associazione medici cattolici italiani and Associazione Nonni 2.0). As noted in Judgment No 242/2019 itself, access to such treatment lends itself to removing the causes of the patient's will to take leave of this life. This is particularly so in cases like the one at issue in the main proceedings, in which the request for assisted suicide came – as is often the case – from a patient in a condition of psychological and existential suffering (Scienza & vita and Unione giuristi cattolici italiani).

[...]

Conclusions on points of law

[...]

5.– Before examining the questions on their merits, it is necessary to recall the principles involved in the questions, which are of paramount importance in the Italian constitutional system.

5.1.– The challenged provision – Article 580 of the Criminal Code – is intended to protect human life: an interest that, as this Court has recently emphasised, "is of utmost importance among the individual's fundamental rights" (Judgment No 50/2022, point 5.2 of the *Conclusions on points of law*).

Even in the absence of explicit recognition in the text of the Constitution, this Court's case law includes life among the inviolable rights of the person enshrined in Article 2 of the Constitution. These rights "have a privileged position in the legal system, as they belong – to quote Judgment No 1146/1988 – 'to the essence of the supreme values on which the Italian Constitution is based'" (Judgment No 35/1997, point 4 of the *Conclusions on points of law*). The right to life, in particular, is a perquisite for the exercise of all other inviolable rights (Order No 207/2018, point 5 of the *Conclusions on points of law*).

Moreover, the right to life is expressly protected by all international human rights charters, which mention this right at the top of the list of individual rights (Article 2 ECHR, Article 6 of the International Covenant on Civil and Political Rights (ICCPR)) or immediately after the proclamation of human dignity (Article 2 of the Charter of Fundamental Rights of the European Union (CFREU)). Those provisions give rise to

obligations that are also binding in the Italian legal system, through Article 117(1) of the Constitution (as well as, with regard to the CFREU, Article 11 of the Constitution).

Finally, recognition of the right to life entails a corresponding duty upon the legal system to ensure its protection through the law (as well as, more generally, through the action of all public powers). This duty – laid down in explicit terms by Article 2(1) ECHR and Article 6(1) ICCPR – has recently been affirmed also by this Court, precisely with reference to the issue of the end of life: "Article 2 of the Constitution – like Article 2 ECHR – gives rise to the duty of the State to protect the life of every individual" (Order No 207/2018, point 5 of the *Conclusions on points of law*). The recognition of the State's duty to protect human life was at the basis of the decision of inadmissibility of a referendum that, if passed, would have left human life in a situation of insufficient protection (Judgment No 50/2022, point 5.4 of the *Conclusions on points of law*).

5.2.– On the other hand, according to this Court's well-established case law, every patient capable of making free and informed decisions enjoys the fundamental right – deriving from Articles 2, 13 and 32(2) of the Constitution – to express their informed consent to any medical treatment and, conversely, to refuse it in the absence of a specific legal provision making it mandatory. This also applies to the treatment necessary to ensure the patient's survival (for example, artificial hydration and nutrition).

This right is also enshrined in Article 8 ECHR, as interpreted by ECtHR case law (*Dániel Karsai v. Hungary*, judgment of 13 June 2024, paragraph 131; *Pretty v. United Kingdom*, paragraph 63) and finds recognition in Article 1 of Law No 219/2017, which in essence transposes and consolidates principles already enucleated by the Italian constitutional, civil and criminal case law on the basis of the constitutional standards (see more extensively on this issue Order No 207/2018, point 8).

Even when the treatment is life-saving, therefore, the patient has the right to refuse it or to have it withdrawn. As this Court has already emphasised, the legal system in essence recognises patients' freedom to allow themselves to die – with binding effects vis-à-vis third parties – by refusing treatment necessary to sustain their vital functions or requesting the interruption thereof (again, Order No 207/2018, point 8 of the *Conclusions on points of law*).

The right to refuse treatment necessary for survival must be exercised "within the context of the 'relationship of care and of trust' – the so-called therapeutic alliance – between patient and physician, which Law No 219/2017 seeks to encourage and support. This relationship 'is based on informed consent, which is where the autonomous decision-making of the patient and the competence, professional autonomy, and responsibility of the physician converge'" (Order No 207/2018, point 8 of the *Conclusions on points of law*). Law No 219/2017 also provides that, where the patient shows their intent to refuse or interrupt the treatment necessary for survival, the physician must explain to them the consequences of the decision and any possible alternatives, and must provide any appropriate support, including psychological assistance to the patient. This without prejudice to the patient's possibility to change

their mind at any time (Article 1(5)) (Order No 207/2018, point 8 of the *Conclusions on points of law*).

However, there is no doubt that, even within the special relationship of trust between doctor and patient, it is for the latter to make the ultimate decision as to whether to undergo or continue to undergo the treatment that the doctor deems necessary for their survival. As Article 32(2) of the Constitution states, no one may be obliged – let alone physically forced – to undergo medical treatment on and in their body. The administration of such treatment would violate not only Article 32(2) but also Article 13 of the Constitution (Judgment No 22/2022, point 5.3.1 of the *Conclusions on points of law*), which protects the person from all forms of coercion on the body (Judgment No 127/2022, point 4 of the *Conclusions on points of law*; Judgment No 238/1996, point 3.2 of the *Conclusions on points of law*), as well as the fundamental right to the physical integrity of the person – a right which is expressly recognised by Article 3 CFREU, but must also be ascribed to the "inviolable rights of the person" referred to in Article 2 of the Constitution, and certainly falls within the scope of protection of the right to private life proclaimed by Article 8 ECHR.

6.– The provision challenged here, Article 580 of the Criminal Code, has already been scrutinised by this Court in Order No 207/2018 and Judgment No 242/2019.

Before examining today's questions on the merits, it is worth summarising the main conclusions reached in those decisions, whose rationale and conclusions must be reaffirmed today.

6.1.– In the current constitutional system, the rationale of both Articles 579 and 580 of the Criminal Code can no longer be found in the idea – underlying the choices of the 1930 legislature – of the interest of the community in preserving the lives of its citizens. Such a perspective would be blatantly at odds with the Constitution, which looks at the human person as a value in and of itself and not as a mere means for promoting collective interests (Order No 207/2018, point 6 of the *Conclusions on points of law*).

Nevertheless, this Court has held and continues to hold that the maintenance of a "belt of protection" (Judgment No 50/2022, point 3.1 of the *Conclusions on points of law*) around the person against self-destructive decisions, achieved through the double criminalisation of consensual homicide and of any form of incitement or material facilitation of the suicide of others, still fulfils the important purposes of protecting people's lives in difficult circumstances and avoiding the risk that people deciding to carry out the extreme and irreversible act of suicide would face pressure of any kind (Order No 207/2018, point 6 of the *Conclusions on points of law*).

The criminalisation of the conduct in question is meant, today, to protect people's lives from irreparable decisions that would definitively prejudice the exercise of any further right or freedom. This approach aims to avoid that such choices, "linked to situations, perhaps only momentary, of difficulty and suffering" (again, Judgment No 50/2022, point 5.3 of the *Conclusions on points of law*), may be induced, solicited or even merely supported by third parties for a variety of reasons.

The prohibition in question – as this Court has further observed – still has a clear purpose, even when (and perhaps, especially when) "it comes to people who are sick, depressed, psychologically fragile, or elderly and in solitude, and who could easily be

induced to take their leave of life prematurely if the system allowed others to cooperate even only in the execution of their suicidal choice, possibly for reasons of personal gain. Therefore, the criminal legislator is not prevented from prohibiting conduct that paves the way for suicidal choices, in the name of an abstract idea of individual freedom, which ignores the concrete conditions of distress or abandonment in which such decisions are often made. On the contrary, it is the duty of the Republic to establish public policies intended to provide support for those who live in such fragile circumstances, removing the obstacles which impede the full development of the human person (Article 3(2) of the Constitution)" (Order No 207/2018, point 6 of the *Conclusions on points of law*).

6.2.– However, this Court has recognised that every patient has a fundamental right to refuse any medical treatment, including that necessary to ensure their survival (point 5.2 above). Consequently, Order No 207/2018 and Judgment No 242/2019 found it unreasonable to maintain the operation of the prohibition in Article 580 of the Criminal Code also in the case of patients who already have the possibility – in the light of Law No 219/2017, implementing the aforementioned constitutional provisions – of putting an end to their existence by refusing the treatment necessary to keep them alive.

Maintaining the ban on assisted suicide in such situations, this Court continued, would force the patient to face death through a slower process, in a scenario that may not correspond "to the patient's vision of a dignified death and which is marked by more pain and suffering for the people close to the patient" (Order No 207/2018, point 9 of the *Conclusions on points of law*). This would entail an untenable limitation of "the freedom of self-determination of sick persons in choosing treatments, including those intended to free them from suffering, which flows from Articles 2, 13 and 32(2) of the Constitution, and would impose upon them one single way to take their leave of life. This limitation cannot be assumed to be intended to protect another constitutionally relevant interest, and thus results in the violation of the principle of human dignity, as well as of the principles of reasonableness and equality of treatment of similar situations (Article 3 of the Constitution)" (Order No 207/2018, point 9 of the *Conclusions on points of law*).

Article 580 of the Criminal Code was thus declared unconstitutional insofar as it did not provide for an exception to the general criminalisation of assisted suicide, where the "assisted persons are (a) affected by an illness that is incurable and (b) causes physical or psychological suffering, which they find absolutely intolerable, and who are (c) kept alive by means of life-sustaining treatment, but remain (d) capable of making free and informed decisions". This Court further required – for the protection of weak and vulnerable persons – that these conditions be verified and approved, within the context of a "medicalised process" under Law No 219/2017, by a public national health service facility and by the competent ethics committee.

7.– Today's referral order urges this Court to further extend the scope of the exception to the criminal liability for assisted suicide imposed under Article 580 of the Criminal Code, with reference to patients in respect of whom requirements (a) (incurable disease), (b) (intolerable physical or psychological suffering) and (d)

(ability to make free and informed decisions) are fulfilled, but in respect of whom requirement (c) (being kept alive by life-sustaining treatment) is not met.

According to the referring court, maintaining the criminal ban in such cases leads to the infringement of Article 3 of the Constitution, in terms of unreasonable unequal treatment of situations which are essentially identical (point 7.1 below); Articles 2, 13 and 32(2) of the Constitution, in terms of the excessive limitation of the patient's freedom of self-determination (point 7.2 below); the principle of human dignity (point 7.3 below); Article 117(1) of the Constitution, in relation to the right to private life under Article 8 ECHR, as well as the prohibition of discrimination under Article 14 ECHR in the enjoyment of the same right (point 7.4 below).

In this Court's opinion, none of those claims are well founded.

7.1.– The referring court considers, first of all, that making the lawfulness of the conduct conditional on the patient's dependence on life-sustaining treatment creates an unreasonable disparity in treatment with respect to all other patients who are also in situations of suffering that they subjectively experience as intolerable, as a result of diseases that are equally incurable. The fact that the specific disease from which the patient suffers does or does not impair their vital functions, so as to require recourse to specific treatment to support those functions, is not indicative – according to the referring court – of their greater or lesser vulnerability, nor of a greater or lesser freedom and awareness of their decision to end their own life. Moreover, the referring court goes on to state that undergoing life-sustaining treatment is not in itself regularly associated with greater suffering, in such a way as to make the patient's decision to resort to assisted suicide more humanly comprehensible.

The latter observations are, in themselves, unquestionable. This Court is fully aware of the intense suffering and prostration experienced by those who, suffering for years from neurodegenerative diseases and being now in a condition of almost total immobility and dependence on the assistance of others for the most basic necessities of daily life, see their situation as intolerable.

Nonetheless, in the absence of a different legislative framework, the requirement of the patient's dependence on life-sustaining treatment – which is admittedly unique in comparative law terms, as pointed out by some amici curiae – does play a pivotal role in the logic of the solution adopted in Order No 207/2018, later taken up in Judgment No 242/2019.

As recalled above (point 6.2), this Court has not recognised a general right to end one's own life in any situation of intolerable physical or psychological suffering caused by an incurable disease. Instead, it has only considered it unreasonable to preclude access to assisted suicide for patients who – in that condition and with their decision-making capacities still intact – already have the right, granted to them by Law No 219/2017 in accordance with Article 32(2) of the Constitution, to decide to end their own lives by refusing the treatment necessary to ensure their survival.

This rationale clearly does not extend to patients who are not dependent on life-sustaining treatment and who do not (or do not yet) have the possibility of allowing themselves to die simply by refusing treatment. The two situations are thus different from the point of view of the rationale underlying this Court's previous decisions. This

fatally undermines the very premise of the complaint of unreasonable unequal treatment of similar situations, raised with reference to Article 3 of the Constitution.

7.2.– The second complaint made by the referring court does not target the alleged similarity between the two situations. Instead, it assumes that the failure to recognise a right of assisted suicide for patients who are not being "kept alive by life-sustaining treatment" violates the patient's right to self-determination, based on Articles 2, 13 and 32(2) of the Constitution.

In this regard, there is no doubt that the fundamental right of the patient to refuse any medical treatment, including that necessary to ensure their survival, derives from those three constitutional provisions (point 5.2 above) and that this Court's assessment of the unreasonableness of the ban on assisted suicide as regards those who already have the possibility of ending their own life by refusing life-sustaining treatment is based precisely on this fundamental right (point 6.2 above).

However, today's question starts from a different and broader notion of 'therapeutic self-determination'.

The right to refuse medical treatment has been developed in the Italian constitutional, civil and criminal case law as a patient's right to informed consent in relation to their doctors' therapeutic proposals and, conversely, as a patient's right to *refuse* the treatment itself. From that latter standpoint, the right in question is closely linked to the protection of the bodily dimension of the person from any external interference not previously consented to and – ultimately – to the protection of the person's physical integrity. That right has thus primarily been characterised as a patient's 'negative' freedom *not to undergo* unwanted treatment on and in their body, even where such measures are intended to protect their health or life.

By contrast, the claim raised in the referral order is fundamentally different and aims instead – in the words of Order No 207/2018 (point 7 of the *Conclusions on points of law*) – at the recognition of a right to a "sphere of autonomy in decisions that concern their own bodies [, which is] an aspect of the more general right to the free development of one's own person".

This Court is aware that, subsequent to Order No 207/2018 and Judgment No 242/2019, the German, Austrian and Spanish Constitutional Courts inferred the existence of a fundamental right to dispose of one's own life, including through the help of third parties, precisely from the right to free self-determination in the development of one's personality (based, respectively, on Article 2 of the German Basic Law, Article 8 ECHR and the combined provisions of Articles 10 and 15 of the Spanish Constitution), from the mandate to protect human dignity (German Federal Constitutional Court judgment of 26 February 2020, in joined cases 2 BvR 2347/15, 2 BvR 2527/16, 2 BvR 2354/16, 2 BvR 1593/16, 2 BvR 1261/16 and 2 BvR 651/16, paragraphs 208-213; Austrian Constitutional Court judgment of 11 December 2020, in Case G 139/2019-71, paragraphs 73 and 74), or from the "person's right to their own death in euthanasia contexts" (Spanish Constitutional Court judgment of 22 March 2023, in Case 4057/2021, pages 73 to 78).

More specifically, on the basis of the recognition of the fundamental right to free self-determination, the German and Austrian Constitutional Courts concluded that the provisions in their respective legal systems placing limits on or banning assisting

suicide are unconstitutional. And the Spanish Supreme Court derived from that same right a precise constitutional basis for the legislative framework recently adopted in that country on euthanasia and assisted suicide for persons capable of self-determination.

This Court is also aware that other jurisdictions around the world have reached similar conclusions, based on principles functionally similar to those invoked by the referring court (e.g. Constitutional Court of Colombia, starting with its judgment of 20 May 1997, C-239/97; Supreme Court of Canada, judgment of 6 February 2015, *Carter v. Canada*, 2015, CSC 5; as well as, most recently, Constitutional Court of Ecuador, judgment of 5 February 2024, 67-23-IN/24).

However, this Court – similarly to what has been decided by the ECtHR (*Dániel Karsai v. Hungary* and, earlier, *Pretty v. United Kingdom*) and the Supreme Court of the United Kingdom (judgment of 25 June 2014, *Nicklinson and others*, KSC 38) – considers that it must reach a different result.

Certainly, one must agree with the referring court – and with the intervenors in the present proceedings – that the decision on when and how to end one's life can be considered among the most significant decisions in an individual's life. However, if it is true that any decision to legalise assisted suicide or euthanasia practices broadens a person's autonomy in freely deciding on their own destiny, at the same time it creates risks that the legal system has a duty to avoid in fulfilment of the duty to protect human life that also derives from Article 2 of the Constitution (point 5.1 above).

The risks in question not only concern the possibility of abuse on the part of third parties to the detriment of the individual person who decides to end their life, but also concern – as has been observed (Supreme Court of the United Kingdom, *Nicklinson and others*, paragraph 228) – the possibility that, in the presence of permissive legislation unaccompanied by the necessary substantive and procedural safeguards, "indirect social pressure" is created on ill or simply elderly and lonely persons, who may become convinced that they have become a burden on their families and on society as a whole, and thus decide to prematurely kill themselves.

In this regard, it must be emphasised that it is not the task of this Court to replace the legislature in finding the most appropriate balance between the right of each individual to self-determination as regards their own life and the competing duties to protect of human life. Rather, this Court is called upon to set minimum standards, in the light of the Constitution, for the protection of each of these principles, without prejudice to the legislature's ability to find solutions that could ensure more protection to one or the other.

From this perspective, Judgment No 50/2022 identified – with respect to the related offence of consensual homicide – a minimum threshold of protection of human life, which entails the unconstitutionality of any legislation that would legalise conduct causing the death of a consenting person regardless of the conditions in which the latter's will was formed, the capacity of the person causing the death, the reasons underlying their actions, as well as the forms of manifestation of consent and the means used to cause death.

On the contrary, Order No 207/2018 and subsequently Judgment No 242/2019 held that the limitation of the patient's self-determination is excessive and hence

constitutionally untenable when the patient already has the possibility of terminating their life by refusing life-sustaining treatment or by requesting its interruption.

Within the framework laid down by these two decisions, a significant margin of appreciation must be afforded to the legislature, whose primary task is to offer balanced protection to all the rights of patients in situations of intense suffering. A violation of the patient's fundamental right to self-determination must, therefore, be ruled out.

This is without prejudice to the duty of the Republic – under Articles 2, 3(2) and 32 of the Constitution as well as under Article 2 ECHR – to ensure that those patients receive all appropriate treatment, including that necessary to eliminate or at least reduce to tolerable proportions the suffering caused by their diseases; and at the same time the duty to grant them all welfare-related, economic, social and psychological support.

Moreover, there is no foundation to the referring court's assumption – relevant to self-determination in the choice of therapies – to the effect that the requirement complained of would end up "perversely" conditioning the exercise of the patient's freedom by inducing them to accept to undergo life-sustaining treatment, including highly invasive measures, which they would otherwise have refused, for the sole purpose of creating the conditions to be able to resort to assisted suicide (which – according to the intervenors – would end up transforming life-sustaining treatment into a sort of compulsory medical treatment).

On the contrary, as observed above (point 5.2), the fundamental right deriving from Articles 2, 13 and 32(2) of the Constitution, in the face of which this Court has held that an absolute ban on assisted suicide is not constitutionally justifiable, also includes the right to refuse, from the very start, the *commencement* of such treatment. Therefore, from a constitutional standpoint, there can be no distinction between the situation of a patient who is already on life-sustaining treatment, which they can demand to be interrupted, and that of a patient who, in order to survive, needs, on the basis of medical assessment, commencement of such treatment, which they can refuse: in both cases, the Constitution and, in deference to it, ordinary law (Article 1(5) of Law No 219/2017) recognise the right of the patient to choose to take leave of this life with binding effects vis-à-vis third parties.

There is thus no doubt that the principles stated in Judgment No 242/2019 apply to both cases. It would, moreover, be paradoxical for the patient to have to agree to undergo life-sustaining treatment only to have it discontinued as soon as possible, in furtherance of their wish to have access to assisted suicide.

7.3.– The referring court's third complaint assumes that it is contrary to the principle of the protection of human dignity to prohibit, under threat of criminal prosecution, assisting patients who ask to die in a situation in which all of conditions set out in Judgment No 242/2019 have been fulfilled except for dependence on life-sustaining treatment. In the referring court's view, this results in the patient being forced into a slow process of dying, at least until the moment when life-sustaining treatment becomes necessary in practice, in a manner that they might well consider at odds with their own conception of dignity in living and dying.

In this regard, it must be emphasised that, from the point of view of the legal system, every life enjoys an inalienable dignity, regardless of the actual conditions in which it is lived. Hence, as also emphasised by various amici curiae, it certainly could not be said that the criminal prohibition in Article 580 of the Criminal Code forces the patient to live a life, objectively, 'not worthy' of being lived.

Another matter, however, is the 'subjective' notion of dignity mentioned in the referral order: a notion that is connected to the patient's conception of their own person and their interest in leaving a certain image of themselves.

This Court is by no means insensitive to the 'subjective' notion of dignity, as evidenced by the passages of Order No 207/2018 in which precisely the patient's subjective assessment of the 'dignity' of their own living and dying is unequivocally referred to (points 8 and 9 of the *Conclusions on points of law*). However, one cannot fail to note that this notion of dignity actually overlaps with that of the person's self-determination, which in turn reflects the idea that each individual must be able to make for themselves the fundamental choices concerning their own existence, including those concerning their own death.

For the reasons stated above, this value must be balanced against the duty to protect human life; and in this balance exercise the legislature must, in the opinion of this Court, enjoy a significant margin of appreciation.

7.4.– Lastly, in its fourth complaint the referring court alleges a violation of Article 117(1) of the Constitution, in connection with Articles 8 and 14 ECHR. In its view, the ban on access to assisted suicide for patients who are not dependent on life-sustaining treatment but are capable of making their own decisions and suffer from incurable diseases causing intolerable suffering infringes their right to private life under Article 8 ECHR, as interpreted by the ECtHR. In addition, this Court's recognition by of a limited area of lawfulness of assisted suicide is said to create, with respect to the patients in question, discrimination in the enjoyment of a right enshrined in the Convention, in breach of Article 14 ECHR.

In this regard, the ECtHR has stated that "an individual's right to decide by what means and at what point his or her life will end" is "one of the aspects of the right to respect for private life" (*Haas v. Switzerland*, judgment of 20 January 2011, paragraph 51; in the same vein, the earlier case of *Pretty v. United Kingdom*, paragraph 67). In a very recent ruling, the ECtHR reaffirmed that a law that prohibits, under threat of criminal prosecution, assistance to a patient to commit suicide necessarily interferes with the latter's right to respect for their private life (*Dániel Karsai v. Hungary*, paragraph 135).

However, in that same decision the ECtHR reiterated that the Contracting Parties – also in view of the absence of a sufficient consensus on the matter among the various Council of Europe Member States in their legal systems – have a "considerable margin of appreciation" (*Dániel Karsai v. Hungary*, paragraph 144; similarly, *Mortier v. Belgium*, paragraph 143; *Haas v. Switzerland*, paragraph 55) as regards the balancing of this right against the interests protected by similar criminal provisions and, in particular, the duty to protect human life. This balancing exercise can legitimately lead States both to maintain restrictive policies and regulate forms of assistance to suicide or euthanasia, without the latter option having to be regarded as precluded by the

obligations of protection of human life deriving from Article 2 ECHR (*Dániel Karsai v. Hungary*, paragraph 145).

The ECtHR has highlighted the difficulty of ascertaining that the patient's decision to access an assisted suicide procedure is truly autonomous, free from external influences and not underpinned by concerns which should be effectively addressed by other means. It has emphasised how ascertaining the genuineness of the patient's request becomes particularly difficult in clinical situations, such as neurodegenerative diseases, in which patients, in advanced states of the disease, may lose the very ability to communicate (*Dániel Karsai v. Hungary*, paragraph 151).

Against this background, the ECtHR has concluded that it is up to each State to assess the wider social implications and the risks of abuse and error that any legalisation of medically assisted suicide procedures inevitably entails (*Dániel Karsai v. Hungary*, paragraph 152).

In its interpretation of Article 8 ECHR, this Court sees no reason to depart from the ECtHR, which is (as recognised by this Court already in Judgments Nos 348/2007 and 349/2007, respectively in points 4.6 and 6.2 of the *Conclusions on points of law*) the ultimate interpreter of the Convention's provisions, pursuant to Articles 19 and 32 ECHR.

Such a solution coincides with this Court's decision on the complaint in relation to the principle of self-determination in domestic law with reference in particular to Article 2 of the Constitution (point 7.2 above).

Nor, finally, can a conflict be found with the prohibition on discrimination under Article 14 ECHR. For the same reasons as those already set out with regard to the complaint made with reference to Article 3 of the Constitution (paragraph 7.1 above), restricting the lawfulness of assisted suicide solely to patients who already have the possibility of ending their lives by refusing life-sustaining treatment cannot be regarded as unreasonable.

8.– In the face of the variety of interpretations offered in practice, advocated by legal counsels for the parties and the intervenors and by the various amici curiae, it is worth clarifying that the notion of "life-sustaining treatment" used by this Court in Order No 207/2018 and Judgment No 242/2019 must be interpreted, by the National Health Service and the ordinary courts, in accordance with the rationale of those decisions.

As has been repeatedly recalled (points 6.2 and 7.1 above), the patient has the fundamental right to refuse *any* medical treatment performed on their body, regardless of its degree of technical complexity and invasiveness, and including procedures that are normally performed by medical personnel and require special skills acquired by specific professional training, but which could be learnt by family members or caregivers looking after the patient.

Insofar as those procedures – such as, to mention some of the examples discussed during the public hearing, the manual evacuation of the patient's bowels, the insertion of urinary catheters or the suctioning of mucus from the bronchi – prove to be necessary to sustain the vital functions of the patient, to the extent that their omission or interruption would foreseeably result in the death of the patient within a short period

of time, they must certainly be regarded as life-sustaining treatment for the purposes of the principles laid down in Judgment No 242/2019.

All of the procedures in question – just like artificial hydration, nutrition or ventilation in the various ways that they can be performed – may be legitimately refused by a patient. As a result of such a refusal, patients are entitled to expose themselves to a proximate risk of death. In such a case, patients find themselves in the situation contemplated by Judgment No 242/2019: it is therefore unreasonable that the criminal ban on assisted suicide should continue to operate in relation to those patients.

To dispel the worries about a progressive uncontrolled extension of the prerequisites of assisted suicide expressed by State Counsel and some amici curiae, it must be reiterated that the patient's dependence on life-sustaining treatment, in the sense now specified, must be ascertained together with all the other requirements set by Judgment No 242/2019.

Of crucial importance in this context is not only the existence of an incurable disease and the patient's persistent full capacity – which is evidently incompatible with a possible psychiatric disease – but also the presence of intolerable suffering (not manageable through appropriate palliative therapies). The suffering can be of a physical nature or result from a situation of intense "existential suffering", which can occur, in particular, in the advanced states of neurodegenerative diseases (on the subject, see ECtHR, *Dániel Karsai v. Hungary*, paragraph 47) and may be refractory to any palliative therapy, given that continuous deep sedation cannot be considered a viable alternative with respect to patients who are not yet in a terminal condition or refuse such treatment (on this point, see ECtHR, *Dániel Karsai v. Hungary*, paragraphs 39 and 157).

9.– It must also be reaffirmed here that a strict compliance with the procedural conditions laid down in Judgment No 242/2019 is required to have access to assisted suicide. This Court has held these conditions essential to avert the danger of abuse against the weak and vulnerable.

The said conditions are included in the framework of the "medicalised procedure" referred to in Article 1 of Law No 219/2017, within which patients must necessarily be assured access to appropriate palliative therapies pursuant to Article 2 thereof. This procedure envisages the necessary involvement of the National Health Service, which is entrusted with the delicate task of ascertaining fulfilment of the substantive conditions for the lawfulness of access to an assisted suicide procedure and also of "ascertaining the appropriate methods of implementation, which must clearly be able to prevent the abuse of the vulnerable, guarantee the dignity of the patient, and prevent suffering" (Judgment No 242/2019, point 5 of the *Conclusions on points of law*). Moreover, pending the adoption of comprehensive measures by the legislature, Judgment No 242/2019 requires the opinion of the territorially competent ethics committee.

In any event, it must be ruled out that the equivalence clause, laid down in the operative part of Judgment No 242/2019 with reference to events occurring prior to the publication of the judgment in the *Official Journal*, can extend to events occurring subsequently (in Italy or abroad). The procedural requirements established by the judgment must instead apply to any subsequent case. Any failure to authorise the

procedure by a public national health service facility may well be challenged before the relevant court, in accordance with the ordinary rules.

Naturally, the need for a careful assessment by the criminal court of all the constituent elements of the crime, including mens rea, remains unaffected.

10.– Finally, this Court cannot but strongly reiterate the recommendation, already expressed in Order No 207/2018 and Judgment No 242/2019, that the legislature and the National Health Service effectively ensure implementation of the principles that were laid down in those decisions and have been reaffirmed and further specified in this judgment, without prejudice to the possibility for the legislature to enact a different set of rules in keeping with the principles set out herein.

As already underlined in Judgment No 242/2019 (point 2.4 of the *Conclusions on points of law*), it is also urgent to ensure that all patients, including those who fulfil the conditions for access to an assisted suicide procedure, be afforded a real possibility of obtaining appropriate palliative care to manage their suffering, in accordance with the provisions of Law No 38/2010. As emphasised by this Court as far back as Order No 207/2018, it is necessary to ensure, including through the provision of the necessary funding, that "the option of administering drugs capable of swiftly bringing about the death of a patient does not carry the risk of any premature renunciation, on the part of the healthcare facilities, to always offer patients the concrete possibility to receive forms of palliative care other than constant sedation, where they are appropriate for alleviating the patients' pain. This in keeping with the duty, taken on by the State with Law No 38/2010, to place the patient in the circumstances to live out the remainder of his or her life intensely and with dignity".

ON THESE GROUNDS

THE CONSTITUTIONAL COURT

declares that the questions as to the constitutionality of Article 580 of the Criminal Code, raised with reference to Articles 2, 3, 13, 32 and 117 of the Constitution, the latter in relation to Articles 8 and 14 of the European Convention on Human Rights, by the Judge for Preliminary Investigations of the Ordinary Court of Florence, in the relevant referral order, are unfounded.

Decided in Rome, at the seat of the Constitutional Court, Palazzo della Consulta, on 1 July 2024.

Signed:

Augusto Antonio BARBERA, President

Franco MODUGNO, Judge Rapporteur

Francesco VIGANÒ, Judge Rapporteur